

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODYRECEIVED
2005 FEB -1 PM 4:02
U.S. DISTRICT COURT
97-00082-SEC
SAN JUAN, P.R.

United States District Court		District Puerto Rico	Clerk's Office Case No. 97-00082-SEC SAN JUAN, P.R.
Name of Movant Manuel Garcia Torres	Prisoner No. 14966-069		
Place of Confinement FCC COLEMAN-USP, P.O. BOX 1033, UNIT E, COLEMAN, FL 33521-1033			
UNITED STATES OF AMERICA		V. Manuel Garcia Torres (name under which convicted)	
MOTION			
1. Name and location of court which entered the judgment of conviction under attack U.S. District Court For The District of Puerto Rico, San Juan, Puerto Rico			
2. Date of judgment of conviction _____			
3. Length of sentence 480 months			
4. Nature of offense involved (all counts) Conspiracy to Distribute Cocaine, Heroin, Marijuana; Money Laundering			
<hr/> <hr/> <hr/>			
5. What was your plea? (Check one) <p>(a) Not guilty <input checked="" type="checkbox"/></p> <p>(b) Guilty <input type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: <hr/> <hr/> <hr/>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one) <p>(a) Jury <input checked="" type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p>			
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			

AO 243 (Rev. 2/95)

9. If you did appeal, answer the following:

(a) Name of court First Circuit Court of Appeals(b) Result Conviction and sentence affirmed in published opinion 341

F.3d.

(c) Date of result August 23, 2003

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court First Circuit Court of Appeals(2) Nature of proceeding Petition For Re Hearing En Banc(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No (5) Result Petition Denied(6) Date of result September 25, 2003

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised

AO 243 (Rev. 2/95)

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result Certiorari denied

(6) Date of result FEBRUARY 23, 2004

- (c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

- (1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

- (d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

AO 243 (Rev. 2/95)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Whether the trial court erred in sentencing the Petitioner on Count One of the superseding indictment which charged Petitioner with knowingly conspiring to possess cocaine, heroin and marijuana with the intent to distribute same

Supporting FACTS (state *briefly* without citing cases or law): _____

SEE MEMORANDUM

B. Ground two: Whether the Supreme Court's definition of statutory maximum as defined in Blakely v. Washington clearly shows that Petitioner's sentence was imposed in violation of the law

Supporting FACTS (state *briefly* without citing cases or law): _____

SEE MEMORANDUM

C. Ground three: Whether the trial court erred by failing to make specific findings as to the amount of drugs attributable to Petitioner without making specific individualized findings as drug amount to Petitioner

Supporting FACTS (state *briefly* without citing cases or law): _____

SEE MEMORANDUM

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing ENRIQUE VELEZ RODRIGUEZ, ATTORNEY

P.O. BOX 70351, SAN JUAN, PUERTO RICO 00936-8351

(b) At arraignment and plea SAME AS ABOVE

(c) At trial SAME AS ABOVE

(d) At sentencing SAME AS ABOVE

AO 243 (Rev. 2/95)

(e) On appeal SAME AS ABOVE(f) In any post-conviction proceeding PRO SE

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

- (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

N/A

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

1/30/05

Date

Angel Manuel Garcia Torres

Signature of Movant